



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

RB:CP:TK
F.#2010R00420

*271 Cadman Plaza East
Brooklyn, New York 11201*

August 26, 2011

BY MAIL and ECF

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Re: United States v. Pedro Espada Jr.,
Criminal Docket No. 10-985 (FB)

Dear Counsel:

The government writes in response to your letter filed on August 25, 2011 raising various discovery issues. We are available to discuss these issues with you, as we have in the past.

1. **Electronic Discovery**

With respect to your requests concerning electronic discovery, the government notes that you are in possession of all of the electronic material that was taken from 731 White Plains Road on April 21, 2010 pursuant to the execution of a search warrant. This material was provided to you on February 1, 2011. We note that we have made available to you the assistance of the IRS technical agent who created the hard drive provided to you on February 1, 2011, to answer any questions you might have. He continues to remain available to assist you, as do we.

As you requested, to help identify where various electronic files can be located within the electronic discovery you were previously provided, please find below an index listing the "image names" of the computers, server files and data storage devices imaged by the government.

Location at 731 White Plans Road	Image Name
Office of Phil Valdez	1) SC1ROOM 2) SC2ROOME
Office of Pedro Gautier Espada	3) Image of Western Digital Ext Hard Drive: "1000237189_1_194A_NY_304137" 4) Image of Memory Cards: "1000237189_1_SD_1" "1000237189_1_SD_2" "1000237189_1_SD_3" "1000237189_1_SD_4" "1000237189_1_SD_5"
Office of Ken Brennan	5) "SC_1 RM_ " 6) "SC2_RM_D" 7) USB External Drive: "1000232189_1_EXT_USB"
Office Suite of Pedro Espada	8) "BCWCBG1"
Storage Container	9) "IBMTHINK"
Files from Server	10) "1000237189_1_194A_NY_304437"

Please note that the government did not image two memory cards found within the office of Pedro Gautier Espada because they could not be read and therefore it could not be determined whether they contained any data. If you would like the government to return those two memory cards to you, we will be happy to do so.

With respect to the compact discs recovered from the storage container, the government believes that it only recovered six such discs (which were provided to you on March 17, 2011, under Bates-numbers T72076 -T72081), but is going to search the original box containing the discs early next week to determine if any additional discs exist. If any such discs are located, they will be provided to you before the end of next week.

2. McGladrey

Please find enclosed a compact disc containing documents provided to the government from McGladrey, Bates-numbered ACCTS-CCDC 76701 - 77599 and RSMM 4173 - 4322. This production, along with the McGladrey documents provided to you on January 7, 2011, February 18, 2011 and August 22, 2011, encompass all of the McGladrey documents in the government's possession.

3. **Other Rule 16 Discovery**

Please find enclosed a disc containing documents provided to the government from the following vendors/professionals:

Henry Schwartz, D.D.S.	HS000001 - HS000018
Bronen's Music	Bronen000001
Bentley of Long Island	Bentley000001 - Bentley000029
Dinesh Desai	Dinesh000001 - Dinesh000063

In addition, please find on the disc invoices provided by various Edible Arrangements vendors, Bates-numbered Edible000001 - Edible000033. Although the government believes it provided these to you previously, the case paralegal is currently on vacation and we cannot confirm the date of production. In the spirit of accommodating you in the most timely fashion, those documents are included here.

In response to your request for documents provided by other specific vendors/professionals, please see the following table:

Lum Yen Restaurant	We are not in possession of documents at this time
Toyo Sushi	We are not in possession of documents at this time
Mamaroneck Diner	We are not in possession of documents at this time
Nautilus Diner	We are not in possession of documents at this time
Legal Sea Foods	We are not in possession of documents at this time
Seasons Japanese Cuisine	We are not in possession of documents at this time
Merv Blanc	You were previously provided these documents on January 7, 2011, Bates-numbered DC 813 – DC 817
Ed Wolf Esq.	We are not in possession of documents at this time
Genova Burns	We are not in possession of documents at this time
Caroline Buckler	We are not in possession of documents at this time
Profusion Management	We are not in possession of documents at this time
Bronx Imaging	We are not in possession of documents at this time

Crystal Jordan	We are not in possession of documents at this time
Code One	We are not in possession of documents at this time

Additionally, the government confirms that the Bates-numbers represented in your letter referencing PIP-Printing - Evesha Films reflect the complete production for those vendors.

4. **Charts, Trial Exhibits and 3500 Material**

The government intends to provide you with its most recent, updated drafts of the summary charts previously provided to you on April 5, 2011, on or about September 2, 2011. With respect to trial exhibits, exhibit list and 3500 material, the government intends to provide those to you as they are finalized, well in advance of trial. We expect to complete the bulk of such a production on or about September 16, 2011.

5. **Jury Questionnaire**

Please find enclosed a draft jury questionnaire for your consideration.

6. **Demand for Reciprocal Discovery from the Defense**

To date, the government has not received any discovery whatsoever from the defendants. The government reiterates its request for reciprocal discovery.

a. Documents and objects.

Pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure, you must provide, and allow for the inspection and copying of (1) any books, papers, documents, photographs, tapes, tangible objects, or copies or portions thereof, that are in the defendants' possession, custody, or control, and that the defendants intend to introduce as evidence or otherwise rely on at trial, and (2) any results or reports of physical or mental examinations and of scientific tests or examinations, made in connection with this case that are in the defendants' possession, custody, or control, and that the defendants intend to introduce as evidence or otherwise rely on at trial or that were prepared by a witness whom the defendants intend to call at trial.

b. Advice of counsel defense.

Please advise the government forthwith if you intend to raise a good faith/advice of counsel defense and turn over any materials in support of such a defense so that the government may review the materials and avoid any unnecessary adjournment of the trial. See United States v. Bilzerian, 926 F.2d 1285 (2d Cir. 1991); In re Grand Jury Proceedings John Doe Co. v. United States, 350 F.3d 299, 302 (2d Cir. 2003); United States v. Cooper, 283 F.Supp.2d

1215, 1225 (D. Kan. 2003) (defendant ordered to provide advise of counsel discovery prior to trial). “This disclosure should include not only those documents which support the [] defense, but also all documents (including attorney-client and attorney work product documents) that might impeach or undermine such a defense.” United States v. Hatfield, 2010 WL 183522, *13 (E.D.N.Y. 2010)(Seybert, J).

c. Prior statements of witnesses.

Please advise us of when you intend to disclose to the government the prior statements of witnesses who will be called by the defendants to testify. See Fed. R. Crim. P. 26.2. In order to avoid unnecessary delays, we request that you have copies of these statements available for production to the government no later than October 11, 2011, one week prior to trial.

d. Expert disclosure.

The government also requests that the defendants disclose a written summary of any expert testimony the defendants intend to use as evidence at trial under Rules 702, 703 and 705 of the Federal Rules of Evidence. The summary should describe the opinions of the witnesses, the bases and reasons for those opinions, and the witnesses’ qualifications.

e. Other affirmative defenses.

Pursuant to Fed. R. Crim. P. 12.3, the government demands written notice of the defendant's intention, if any, to claim a defense of actual or believed exercise of public authority, and also demands the names and addresses of witnesses upon whom the defendant intends to rely in establishing the defense identified in any such notice.

Pursuant to Fed. R. Crim. P. 12.1(a), the government demands written notice, to be served within ten days of this demand, if the defendant intends to offer a defense of alibi. The written notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offenses, and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. The offenses took place at the location, dates, and times specified in the Complaint and Indictment.

7. Conclusion

If you have any further question or request, please do not hesitate to contact us.

Very truly yours,

LORETTA E. LYNCH
United States Attorney

By: /s/
 Roger Burlingame
 Carolyn Pokorny
 Todd Kaminsky
 Assistant U.S. Attorneys

Enclosures

cc: Clerk of Court (FB) (w/o enclosures)